

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Writ Petition No. 4896 1998

Bhika Raghu Banbale petitioner

vs

The Land Acq Officer II & ors ...respondents

Mr U B Nighot for petitioner

Mr. Y.D Mulani AGP for respondent nos 1 to 4

Mr.R M Sawant for respondent no. 5

CORAM:A.P.SHAH & S.C.DHARMADHIKARI JJ.

5th October, 2004

P.C.

Heard advocates.

2 The petitioner is an agriculturist and is owner of lands bearing Gat No.103, admeasuring 1 hector and 151.9 Ares and Gat No.41 admeasuring 65.5 Ares situated at village Pimpaloli, Taluka Mava, District Pune. The petitioner states that the said lands are fertile and entire family of the

petitioner is dependent on the said land. It appears that the State Government on 12.12.1997 published a notification under section 4(1) in the Official Gazette for acquiring the lands of the petitioner. Urgency clause under section 17(4) was invoked in the said notification and inquiry under section 5A of the said Act was dispensed with. Thereafter a notice dated 12.6.1998 was issued to the petitioner under section 17(3-A) of the Land Acquisition Act, 1894 asking him to take advance amount of compensation and further intimating that respondents would be taking possession of the land on 30.6.1998. By the said notice petitioner was informed that the said lands were required for public purpose of using them as dumping ground for Bombay Pune Express Highway. The petitioner has not accepted the compensation. The legality and propriety of the acquisition is questioned in the present petition.

3. The learned counsel appearing for the petitioner contended that the petitioners land is being acquired for using it only for dumping ground

and the said purpose cannot be said to be genuine and real public purpose. He contended that the petitioner's land is not coming in alignment and the requirement of the respondent was only temporary and for collateral purpose. Therefore it would be wrong to acquire the petitioner's land permanently by invoking urgency clause. In any event it is pointed out that construction of Expressway is complete and the alleged public purpose no longer survive.

4. The Executive Engineer of the respondent no. 5 has filed a counter affidavit. In para 5 of the said affidavit it is stated thus:

"5. I say that there are 2 tunnels on the Pune side of the said Express way and two tunnels on the Panvel side. I say that unless the said tunnels are constructed the work of the Expressway Project cannot be completed. I say that the petitioners land in S No 103 of

village Pimploli as adjacent to the tunnel on the Pune side. The said tunnel is 900 meters long. I say that the petitioners land is required for dumping the excavated material from the tunnel. I say that looking to the public purpose for which the land is required the State Government was satisfied that the urgency clause need to be applied. I say that accordingly the petitioners land was notified under section 17(3) of the Land Acq Act and the petitioner was offered 80% of the compensation".

(emphasis supplied)

5. In our opinion it is not necessary to decide the larger issue as to whether the purpose for which the land was sought to be acquired was a public purpose or not. It is an admitted position that the construction of Express Highway is already

completed and 900 meter tunnel at village Pimploli is also complete. Therefore even assuming that the land was needed for a public purpose at the relevant time, it is doubtful whether the respondents still need the land for the public purpose. Prima facie we find substance in the submission of the petitioner's counsel that the purpose of acquisition of the said land no more survive. In our opinion, ends of justice would be met if the State Government is directed to consider the case of the petitioner under section 48 of the Land Acquisition Act to drop the proceedings as the land is not needed for the project. The petitioner is directed to make an application for release of the land under section 48 within four weeks from today. The State Government shall consider the said application on its own merits and pass appropriate order in accordance with law within 3 months from the date of receipt of application. Ad interim relief which was granted on 16.9.1998 will continue till the application under section 48 of the petitioner is decided and for a period of four weeks from the date of communication of the

decision of the State Government.

6. Petition is accordingly disposed of. No order as to costs.